

1 UNITED STATES BANKRUPTCY COURT  
2 NORTHERN DISTRICT OF CALIFORNIA  
3 (OAKLAND DIVISION)

4 In re:

5 BROOK STREET HOLDINGS LLC, Case No. 19-41564  
6 Chapter 7  
7 Oakland, California  
8 September 11, 2019  
2:07 p.m.  
Debtor.

9 \_\_\_\_\_/  
10 TRANSCRIPT OF PROCEEDINGS  
11 ORDER TO SHOW CAUSE AS TO DAVID IRA KELVIN AND  
DONALD CHARLES SCHWARTZ

12 BEFORE THE HONORABLE ROGER L. EFREMSKY  
13 UNITED STATES BANKRUPTCY JUDGE

14 APPEARANCES:

15 For Donald Schwartz: SAMUEL C. BELLICINI, ESQ.  
16 1005 Northgate Drive #240  
San Rafael, California 94903

17 For the Trustee: SHIERKATZ  
18 BY: JEREMY W. KATZ, ESQ.  
19 930 Montgomery Street #600  
San Francisco, California 94133

20 In pro per: DAVID IRA KELVIN  
21

22 Also Present: DONALD SCHWARTZ  
23  
24  
25

1 APPEARANCES (CONTINUED):

2

3 Court Recorder: NASH SINGH  
4 UNITED STATES BANKRUPTCY COURT  
5 1300 Clay Street  
6 Oakland, California 94612

7

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## P R O C E E D I N G S

September 11, 2019

2:07 p.m.

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THE COURT: All right. The remaining matter on calendar is Line Item 8 in the matter of Brook Street Holdings LLC, Case No. 19-41564. This is the Order to Show Cause as to David Ira Kelvin and Donald Charles Schwartz.

MR. BELLICINI: Good afternoon, Your Honor, Sam Bellicini appearing on behalf of Donald Schwartz. Mr. Schwartz is here with me today.

THE COURT: All right, Mr. Bellicini, nice to see you.

MR. BELLICINI: Thank you.

MR. KELVIN: Good afternoon, Judge. I'm David Kelvin. I'm appearing pursuant to the OSC I received.

THE COURT: All right.

MR. SCHWARTZ: Good afternoon, Your Honor, Donald Schwartz appearing in response to the OSC.

THE COURT: Okay. All right.

MR. KATZ: Good afternoon. Jeremy Katz for the Trustee. I'm basically here to observe.

THE COURT: Okay.

MR. KATZ: I also will note that the creditor is in the courtroom. I don't know if she wants to be heard or not. I'm just --

1           THE COURT: Well, I have just some preliminary  
2 questions. I'm waiting to see when the Statement of  
3 Financial Affairs, the schedules, and the creditor matrix  
4 is going to be filed. Mr. Schwartz? Mr. Kelvin?

5           MR. KELVIN: Who would you like to respond first?

6           THE COURT: I understand both of you to be co-  
7 counsel in this case.

8           MR. KELVIN: That, I'm sorry, is not my  
9 understanding, Your Honor. I never agreed to represent the  
10 Debtor.

11          THE COURT: Okay. I guess what I've got to do is  
12 I want to do something different then. I received papers  
13 filed by Mr. Bellicini on behalf of Mr. Schwartz -- even  
14 though they were late; it was only a day -- I didn't  
15 receive anything from you counsel. Mr. Kelvin, any reason  
16 why you didn't file any opposition or at least when you  
17 received Mr. Schwartz and Mr. Bellicini's papers?

18          MR. KELVIN: Well, Your Honor, I looked at the  
19 Order to Show Cause which states that I am not a registered  
20 participant, and I took that to mean that I didn't have the  
21 ability to file anything, and that's why I didn't.

22          THE COURT: Okay.

23          MR. KELVIN: And it's further my opinion that I  
24 don't represent anyone in this case and have never filed  
25 anything in this case.

1           THE COURT: All right. Well then can you -- have  
2 you had an opportunity to read the papers that Mr.  
3 Bellicini filed on behalf of Mr. Schwartz?

4           MR. KELVIN: Yes.

5           THE COURT: Can you give me your response to those  
6 papers?

7           MR. KELVIN: Well, Mr. Bellicini attached to his  
8 papers the petition that started this matter. It has my  
9 name written on it but it's not my signature, and I didn't  
10 prepare this, and I didn't sign it.

11          THE COURT: So when is the first time you ever saw  
12 this document?

13          MR. KELVIN: When Mr. Bellicini sent it to me.

14          THE COURT: And when was that?

15          MR. KELVIN: He could probably answer -- a few  
16 days ago. It looks like it was dated September 4<sup>th</sup>.

17          THE COURT: All right. So simply stated, do you  
18 even know Mr. Schwartz?

19          MR. KELVIN: Yes, I know him.

20          THE COURT: Okay. Did you have any discussion  
21 about filing a bankruptcy on behalf of Brook Street  
22 Holdings LLC before the case was filed?

23          MR. KELVIN: I did.

24          THE COURT: Okay. I want to be careful not to get  
25 any type of attorney-client privileges --

1 MR. KELVIN: Well, I don't have a client as far as  
2 I can tell.

3 THE COURT: Okay. So I guess my point is, if you  
4 discussed -- did you discuss a bankruptcy filing for Brook  
5 Street Holdings LLC with Mr. Schwartz prior to the time  
6 that the bankruptcy was filed?

7 MR. KELVIN: I did. I appear to have been under a  
8 misunderstanding. I have -- I appeared in Federal Court --  
9 not in Bankruptcy Court, in Federal Court -- about eight or  
10 nine years ago in a civil rights case. And I had to get a  
11 Pacer account, and it was presented to me that my Pacer  
12 account was needed to file this, and the question was  
13 whether that was okay with me, and I said, well, I don't  
14 know. If it's okay with the Court, it's okay with me. I  
15 wasn't aware there was going to be my name on it.

16 THE COURT: But it wasn't filed with your Pacer  
17 account.

18 MR. KELVIN: Yes, I now know -- which I didn't  
19 then -- that that's a different arrangement. I think  
20 that's for the United States District Court for the  
21 Northern District.

22 THE COURT: Right. But I'm saying, for this case,  
23 this wasn't an issue where you were having a discussion  
24 with Mr. Schwartz to use your ecf account or password to  
25 file this bankruptcy.

1 MR. KELVIN: That's what I thought we were  
2 discussing. I thought I was accommodating the Debtor and  
3 Mr. Schwartz by letting them use my account.

4 THE COURT: But he didn't use your account.

5 MR. KELVIN: That's where my misunderstanding was.  
6 My account would be useless because it doesn't access  
7 Bankruptcy Court.

8 THE COURT: And if you weren't representing the  
9 client, and he wasn't using your account, what involvement,  
10 if any, would you have in this then?

11 MR. KELVIN: I thought I was doing him a favor.

12 THE COURT: Okay. So your understanding is you  
13 had a discussion about filing; that Mr. Schwartz said he  
14 wanted to use your ecf account to file this bankruptcy for  
15 this client, Brook Street Holdings LLC.

16 MR. KELVIN: Yes.

17 THE COURT: But you didn't prepare the petition.

18 MR. KELVIN: I did not.

19 THE COURT: You didn't sign the petition?

20 MR. KELVIN: No, it's not my signature.

21 THE COURT: You didn't date the petition?

22 MR. KELVIN: I never saw it until Mr. Bellicini  
23 sent it to me.

24 THE COURT: Did you have -- in the response,  
25 according to what Mr. Schwartz indicates -- let me get it

1 here -- well, I'm reading from Mr. Schwartz's declaration  
2 and at paragraph -- I'll start at paragraph -- well, first  
3 off, he says:

4 "I'm an attorney who is currently licensed to  
5 practice law in the State of California in this  
6 Court. I am co-counsel for the Debtor herein. I  
7 also represent the Debtor on business matters.  
8 The Debtor is separately represented by co-  
9 respondent, Attorney David Kelvin."

10 And you disagree with that; you don't represent them in  
11 this bankruptcy.

12 MR. KELVIN: That's my position. I've never  
13 agreed to represent Brook Street Holdings in any matter  
14 whatsoever.

15 THE COURT: Okay. He then goes on in paragraph 2,  
16 says:

17 "On July 9, 2019, I received instructions from  
18 the Debtor to file the petition for the  
19 bankruptcy in this matter."

20 Do you know anything about that communication between the  
21 Debtor and Mr. Schwartz on July 9th?

22 MR. KELVIN: I don't have personal knowledge of  
23 it, no.

24 THE COURT: Okay. And then the petition was  
25 signed by Attorney Kelvin, and you say that's not true.



1 MR. KELVIN: No, would you like to see my driver's  
2 license?

3 THE COURT: I'm just asking for your testimony.  
4 All right.

5 "And attached as Exhibit A is a true and correct  
6 copy of an electronic facsimile transmitted that  
7 I received from the Debtor at 9:37 a.m. on July  
8 9<sup>th</sup>, 2019."

9 He goes on in paragraph 3; he says:

10 "On the morning of July 10<sup>th</sup>, 2019, I had a  
11 telephone conversation with Attorney Kelvin and  
12 confirmed that it was Debtor's instruction to  
13 file the petition."

14 Did you speak with Mr. Schwartz on the 10<sup>th</sup> to confirm that?

15 MR. KELVIN: I spoke with Mr. Schwartz. That's  
16 the conversation I discussed with you a couple minutes ago.

17 THE COURT: Okay. And then it says:

18 "At 9:14 a.m., I sent a confirming e-mail message  
19 to Attorney Kelvin. Attached at Exhibit B is a  
20 true and correct copy of that confirming e-mail."

21 And it says -- this is the attachment. It says:

22 "Dave: (referring to you) This will confirm our  
23 call this morning that you (Mr. Kelvin), you  
24 instructed and authorized the courier delivery to  
25 the U.S. Bankruptcy Court the attached petition."

1 MR. KELVIN: Did you want me to respond?

2 THE COURT: Yes.

3 MR. KELVIN: Well, first of all, there was no  
4 petition attached to it, and to me, that's not an accurate  
5 summary of our conversation.

6 THE COURT: Okay. But I guess what I want to be  
7 clear about is, you didn't prepare the petition; you didn't  
8 sign the petition.

9 MR. KELVIN: No. The first time I saw it was when  
10 Mr. Bellicini sent it to me.

11 THE COURT: Sent it to you.

12 MR. KELVIN: Can I make one more comment?

13 THE COURT: Please.

14 MR. KELVIN: It also says, later on July 10<sup>th</sup>, that  
15 is in the Order to Show Cause:

16 "Kelvin filed a motion to voluntarily dismiss the  
17 case."

18 I also dispute that. I didn't prepare such a motion, nor  
19 did I file such a motion.

20 THE COURT: Do you know how it is that -- and that  
21 is Exhibit D to Mr. Bellicini's papers in the declaration  
22 of Mr. Schwartz -- it bears your name, your law firm's  
23 heading, and it has a /s/ dated Ira Kelvin. You're telling  
24 me you didn't prepare this document?

25 MR. KELVIN: No. To be honest, I don't remember

1 seeing it attached to Mr. Bellicini's papers. I see a  
2 petition.

3 THE COURT: This would be Exhibit D.

4 MR. KELVIN: Let's see Exhibit B.

5 THE COURT: D.

6 MR. KELVIN: No, I did not prepare this. My name  
7 is spelled wrong, Judge. Come on now.

8 THE COURT: Okay. All right. Okay. Have a seat.  
9 Thank you. Mr. Bellicini?

10 MR. BELLICINI: Thank you, Your Honor. I think I  
11 and the Court would have benefitted greatly from a written  
12 response to the OSC from Mr. Kelvin.

13 THE COURT: The Court might have, but he didn't,  
14 and he's here today, and he's basically denying everything  
15 that Mr. Schwartz said in his statement.

16 MR. BELLICINI: Well, and all I can do in response  
17 to that is --

18 THE COURT: Did you talk to him before you  
19 prepared these papers for Mr. Schwartz?

20 MR. BELLICINI: I did.

21 THE COURT: You did.

22 MR. BELLICINI: I did.

23 THE COURT: And did he tell you that he had  
24 prepared the petition?

25 MR. BELLICINI: Mr. Kelvin denied signing

1 anything.

2 THE COURT: But the papers that you filed give a  
3 different story.

4 MR. BELLICINI: Well, the papers that I filed  
5 include a declaration from my client stating that this was  
6 David Kelvin's work; this was David Kelvin's signature. He  
7 received the petition originally from his client, but then  
8 if you look at the e-mail from Mr. Schwartz to Mr. Kelvin  
9 in Exhibit B, you'll see at the bottom, there is an  
10 attachment there, the Brook Street Chapter 7 petition scan,  
11 3005 kilobytes. Mr. Kelvin got up here and just told you  
12 he'd never seen that petition until I sent it to him. I  
13 have the e-mail. I mean I can find a way to produce the  
14 electronic version of this to the Court.

15 THE COURT: Well, Mr. Bellicini, Mr. Schwartz says  
16 that he received this document from --

17 MR. BELLICINI: His client.

18 THE COURT: He says he received it on July 9<sup>th</sup>.

19 MR. BELLICINI: He did.

20 THE COURT: How is it that the document is  
21 dated -- the petition is dated July 10<sup>th</sup>?

22 MR. BELLICINI: I do not know.

23 THE COURT: Did you think to ask your client that?

24 MR. BELLICINI: I did not. But if it was for  
25 filing on July 10<sup>th</sup>, and --

1 THE COURT: You don't know why it's dated July 10<sup>th</sup>  
2 versus if he received it on July --

3 MR. BELLICINI: I have no idea. I just assumed,  
4 as I'm entitled to, that everything that my client sent to  
5 me was true and correct, and he signed a declaration to  
6 that effect, and I was entitled to believe it. I still  
7 believe it.

8 THE COURT: I'm going to take a five-minute  
9 recess.

10 (Whereupon, a recess is taken at 2:18 p.m., and the  
11 court is reconvened at 2:22 p.m.)

12 COURTROOM DEPUTY: Please come to order. The  
13 court is back in session.

14 THE COURT: All right. Please be seated. All  
15 right. What I'm going to do is I'm going to continue this  
16 OSC approximately 30 days.

17 MR. KELVIN: Could I request a date that I'm not  
18 required to be somewhere else, Judge?

19 THE COURT: I'm looking at setting this in  
20 October.

21 MR. KELVIN: Any day of the week?

22 THE COURT: I can do the 8<sup>th</sup>, the 10<sup>th</sup> or the 11<sup>th</sup>.

23 MR. KELVIN: The 10<sup>th</sup> would be my request if that's  
24 convenient.

25 THE COURT: Okay. Then I'm going to continue this

1 to the 10<sup>th</sup>. It will be at 10:00 o'clock -- no, will you be  
2 coming down that day or that night?

3 MR. KELVIN: Well, I'll actually be coming down  
4 here on the 8<sup>th</sup> because I have a matter at RCD, and I'll  
5 just stick around.

6 THE COURT: Okay. Then I'll have it at 10:00  
7 o'clock in the morning. I'm going to continue this. Mr.  
8 Kelvin, what I want you to do; I want you to file a written  
9 response to the papers that Mr. Bellicini and Mr. Schwartz  
10 filed. I want to have your position in writing under oath  
11 as to what transpired. I would specifically address the  
12 documents, the e-mails, how it is that you were having  
13 communications. Can you file that within a week?

14 MR. KELVIN: Well, I don't know if I can file at  
15 all without the account.

16 THE COURT: You can file by paper. You can mail  
17 it in.

18 MR. KELVIN: Oh, I can go to the Clerk's Office  
19 and just handed it to them?

20 THE COURT: Absolutely. You can mail it into the  
21 Clerk's Office.

22 MR. KELVIN: In this building?

23 THE COURT: In this building. It's on the third  
24 floor.

25 MR. KELVIN: Yes. That I can do.

1 THE COURT: Okay. So let's just say that you'll  
2 have it in by -- today is the 11<sup>th</sup>. Can you get that on  
3 file say by the 20<sup>th</sup>?

4 MR. KELVIN: Yes.

5 THE COURT: Okay. And I am going to have the  
6 United States Trustee here at this meeting. Mr. Katz, are  
7 you available on that day as well?

8 MR. KATZ: Yes.

9 THE COURT: Okay. And Mr. Bellicini, when is your  
10 client going to file the Statement of Financial Affairs,  
11 the creditors' matrix, and the schedules for the  
12 bankruptcy?

13 MR. BELLICINI: I don't know. I believe new  
14 counsel has been hired.

15 THE COURT: Can you confer with your client?  
16 Pardon me?

17 MR. BELLICINI: I believe new counsel has been  
18 hired. I would defer to Mr. Schwartz on that.

19 THE COURT: All right. Mr. Schwartz, when are  
20 those going to be filed?

21 MR. SCHWARTZ: An attorney for the LLC has been --  
22 was retained. He told me yesterday.

23 THE COURT: And who is that?

24 MR. SCHWARTZ: James Howarth, H-o-w-a-r-t-h.

25 THE COURT: Okay.

1           MR. SCHWARTZ: He said he was -- he told me he was  
2 retained yesterday to take over representing the LLC in  
3 this matter.

4           THE COURT: Okay. Do you have the business  
5 records for the LLC in your possession?

6           MR. SCHWARTZ: I do not.

7           THE COURT: All right.

8           MR. SCHWARTZ: I have my escrow account that  
9 relates to the claim -- the supposed claim. That's a  
10 personal business escrow account.

11          THE COURT: All right. And then Mr. Bellicini, if  
12 you and Mr. Schwartz want to file any supplemental  
13 papers -- we've got -- by September 20<sup>th</sup>, I will have the  
14 written papers of Mr. Kelvin, and I'll give you until the  
15 27<sup>th</sup> to file any supplemental papers you want the Court to  
16 consider, and again, I'm putting this then over to October  
17 10<sup>th</sup> at 10:00. And Mr. --

18          MR. BELLICINI: And I should let the Court -- I  
19 apologize, Your Honor.

20          THE COURT: Go ahead.

21          MR. BELLICINI: I should let you know I have  
22 another matter set for hearing in this building at 9:00  
23 a.m. that day. I anticipate it will be finished by 10:00  
24 o'clock.

25          THE COURT: Okay.



1 MR. BELLICINI: But I wanted to let the Court  
2 know.

3 THE COURT: And that will be with Judge Lafferty  
4 or Judge Novack?

5 MR. BELLICINI: I believe so.

6 THE COURT: And what's the nature of that hearing?

7 MR. BELLICINI: It's confidential, Your Honor.  
8 I'm willing to go off the record or have this --

9 THE COURT: Is it -- I guess my question, is it a  
10 matter that's on calendar, or is this a private meeting  
11 with one of the judges?

12 MR. BELLICINI: It's not a -- it's neither; it is  
13 a standing committee matter that is being followed up on.

14 THE COURT: Okay. I'm aware of that matter. And  
15 is that in San Francisco or is that here?

16 MR. BELLICINI: I have that here on Clay Street.  
17 It is at the Bankruptcy Court Ninth Circuit, so I assume  
18 it's in San Francisco. My calendar is in error.

19 THE COURT: Okay.

20 MR. BELLICINI: If we could put this --

21 THE COURT: I think what I'm going to do then is  
22 I'm going to put this over til -- I'm going to do it at  
23 1:00 o'clock, October 20<sup>th</sup> at 1:00.

24 MR. BELLICINI: Thank you, Your Honor.

25 THE COURT: Because if it's at 9:00 o'clock, then

1 it may be in San Francisco either at the Ninth Circuit --  
2 and I think there's a matter before Judge Blumenstiel  
3 that's coming up in October as well for Mr. Schwartz.

4 MR. KELVIN: Judge, did you just say October 20<sup>th</sup>?

5 THE COURT: No, September -- excuse me, it's  
6 October 10<sup>th</sup>. You're just going to file your papers by  
7 September 20<sup>th</sup>. I misspoke.

8 MR. KELVIN: Okay. But at 10:00 o'clock?

9 THE COURT: I'm moving it -- on the 10<sup>th</sup> of October  
10 to 1:00 o'clock.

11 MR. KELVIN: I'm sorry for the confusion. Thank  
12 you, Judge.

13 THE COURT: Okay. Mr. Katz, anything you have  
14 that you wish to add? I guess my question I have is with  
15 regards to the real property which is located in Oakland.  
16 What's the status of it?

17 MR. KATZ: The status is the same as when the case  
18 was filed, although we are -- based on my research, this  
19 case was filed to stop a foreclosure, and I don't know if  
20 either one of these gentlemen can either corroborate or  
21 refute my understanding, but my suspicion is that probably  
22 at the same time the bankruptcy was filed, the Debtor got  
23 an extension of like three months, and the foreclosure sale  
24 was postponed, because I do see -- I can see that on the  
25 public records; it was postponed. It's also my

1 understanding that this property is actually two parcels,  
2 one of which was under foreclosure and the other not, and  
3 it's still not clear to me or the Trustee, you know, what  
4 encumbrances -- there are encumbrances. I don't know how  
5 much or which parcel, and sort of we were -- the Trustee  
6 was waiting to see what happens today.

7 THE COURT: And I take it with the two 341 Meeting  
8 of Creditors, neither Mr. Schwartz nor the client has  
9 appeared?

10 MR. KATZ: That's correct.

11 THE COURT: Mr. Schwartz, why haven't you and/or  
12 your client appeared at the 341 Meeting of Creditors?

13 MR. SCHWARTZ: First of all, the client told me  
14 that this other attorney would be taking over, and either  
15 before or --

16 THE COURT: There have been two previous 341  
17 Meeting of Creditors. The fact of what your client may  
18 have said to you, that something did not excuse you from  
19 attending or your client attending the 341 Meeting of  
20 Creditors. Mr. Schwartz, you are in hot water, well above  
21 what Mr. Bellicini is representing you for.

22 MR. SCHWARTZ: I did offer -- at one point, Your  
23 Honor, I did offer -- I thought I was filing this on behalf  
24 of Mr. Kelvin. I have forwarded --

25 THE COURT: Mr. Kelvin is not the debtor. The

1 Debtor is Brook Street Holdings LLC. The bankruptcy was  
2 filed on behalf of Brook Street Holdings LLC, not Mr.  
3 Kelvin.

4 MR. SCHWARTZ: Okay. The Trustee at one point  
5 asked me a lot of questions that I didn't know the answers  
6 to about the asset structure of the company, et cetera, the  
7 debt asset structure. I offered in an e-mail to the  
8 Trustee to put the managing member of the LLC on a  
9 conference call so he could get the answers to those  
10 questions.

11 THE COURT: Did you tell the individual  
12 representing Brook Street Holdings LLC -- in fact, who is  
13 the individual who signed the papers for the LLC?

14 MR. BELLICINI: I'm sorry, Your Honor, do you mean  
15 the bankruptcy petition?

16 THE COURT: Correct. Who signed the petition?

17 MR. SCHWARTZ: You're asking me?

18 THE COURT: Yes, Mr. Schwartz.

19 MR. SCHWARTZ: I got the petition from the client  
20 as my declaration, I believe --

21 THE COURT: And who -- who at your client did you  
22 speak with?

23 MR. SCHWARTZ: I spoke to the client, Mr. Heath,  
24 as well as his personal assistant.

25 THE COURT: And do you know who dated the document

1 July 10<sup>th</sup> that he signed?

2 MR. SCHWARTZ: Is this -- which document are  
3 you --

4 THE COURT: This is the petition that you filed.

5 MR. SCHWARTZ: No -- I mean, you're asking me do I  
6 have firsthand --

7 THE COURT: I'm asking you do you know who signed  
8 the date July 10<sup>th</sup>, 2019.

9 MR. SCHWARTZ: Who put that date on it? I did not  
10 put that date on it.

11 THE COURT: Okay.

12 MR. KATZ: I know there is a continued 341 on  
13 September 25<sup>th</sup>. That's all I know about that.

14 THE COURT: All right.

15 MR. KATZ: And that's correct, there's been no  
16 appearance in the two previous ones, the second one being  
17 this morning.

18 MR. SCHWARTZ: I have forwarded all the court  
19 notices. I was under the mistaken belief that I could use  
20 my filing credentials for Mr. Kelvin.

21 THE COURT: Mr. Schwartz, I have to tell you, I  
22 don't find your declaration credible. You have filed some  
23 21 bankruptcies in the Northern District of California  
24 alone. You're also in your own Chapter 13 bankruptcy  
25 pending in San Jose. You're very familiar with our ecf

1 rules. I'm not buying it.

2 MR. SCHWARTZ: Well, I apologize.

3 THE COURT: All right. So I'm going to -- we've  
4 got the dates, October 10<sup>th</sup> at 1:00 o'clock. Mr. Kelvin,  
5 you're going to file papers, send them in, and those will  
6 be in by the 20<sup>th</sup> of this month.

7 MR. KELVIN: Can I ask a question?

8 THE COURT: Yes.

9 MR. KELVIN: In State Court, they like a courtesy  
10 copy delivered to the chambers, the courtroom. Is that a  
11 practice here?

12 THE COURT: It would be appreciated. It'll get  
13 scanned in the next day and then I'll be able to look at  
14 it, but if you have -- if you're kind enough to do it,  
15 that's fine, but it's not necessary.

16 MR. KELVIN: Thank you.

17 THE COURT: And then Mr. Bellicini and Mr.  
18 Schwartz, if you want to respond to anything that Mr.  
19 Kelvin files by the 20<sup>th</sup>, you're free to do so by the 27<sup>th</sup> of  
20 the month.

21 MR. BELLICINI: Thank you, Your Honor.

22 THE COURT: Okay.

23 MR. BELLICINI: I am wondering if -- I'm wondering  
24 if it is appropriate to have a transcript of today's  
25 hearing prepared in advance of Mr. Kelvin's response.

1 THE COURT: You can obtain it. We have it --  
2 you're going to be able to listen to it on line, so it'll  
3 be up probably within 24 hours. Yeah. So you have that  
4 opportunity.

5 MR. BELLICINI: Thank you.

6 THE COURT: We naturally do it so you'll have that  
7 opportunity to listen to it.

8 MR. BELLICINI: Thank you, Your Honor.

9 MR. KATZ: I do have a question because frankly,  
10 at this point, it appears that the Debtor is not  
11 represented, and if it is, it's not being represented.

12 THE COURT: Correct.

13 MR. KATZ: And whether Mr. Howarth gets involved,  
14 you know, I don't know if and when that's going to happen.  
15 For example, this Monday, two days ago, I sent -- believing  
16 that Mr. Kelvin was counsel of record -- I sent him an e-  
17 mail indicating that it appears that the Debtor is  
18 attempting to transfer an interest in that property post-  
19 petition, but I can't contact the principal because --  
20 assuming he's represented by one of these gentlemen. I  
21 mean it's a real -- it's an issue I can't --

22 THE COURT: I understand. That's why I want you  
23 to get the United States Trustee. Contact Tracy Hope  
24 Davis, because I think they need to get involved with this.

25 MR. KATZ: The U.S. Trustee has been contacted.

1 That's my understanding.

2 THE COURT: Call them and tell them that Judge  
3 Efremsky specifically wants him to file papers prior to the  
4 hearing, and I want them to have a representative here on  
5 October 10<sup>th</sup>, and I'll have Chambers also contact Tracy Hope  
6 Davis.

7 MR. KATZ: I'm sorry. Say the last --

8 THE COURT: I want you to contact them and say  
9 Judge Efremsky wants the U.S. Trustee to file an  
10 appearance, something in writing, and I want them to have  
11 somebody here.

12 MR. KATZ: Okay. I can do that.

13 THE COURT: It appears to the Court that this was  
14 something filed simply to stop a foreclosure. There was no  
15 intention to go forward with the bankruptcy, and this may  
16 be bankruptcy fraud. I don't know, and I'm not the  
17 investigator here, and that's why I'm dependent upon the 7  
18 Trustee, yourself, but more importantly, the United States  
19 Trustee because I don't know if there's any money here, and  
20 it's not appropriate for the 7 Trustee and you to have to  
21 spend time and money where the U.S. Trustee is  
22 specifically -- this is one of their responsibilities to  
23 investigate these types of actions. This is extremely  
24 serious. This is one of the most blatant situations I've  
25 seen in what appears to be a bankruptcy filed purely to



1 stop a foreclosure.

2 MR. KATZ: Correct.

3 THE COURT: Okay. All right.

4 MR. KATZ: I agree, but in this case, there does  
5 appear to be real estate with equity in it, and there does  
6 appear to be a creditor.

7 THE COURT: And there also appears to be maybe  
8 another hundred thousand dollars out there that somebody  
9 retained on behalf of the LLC as well based on the Proof of  
10 Claim that was filed.

11 MR. KATZ: Correct. Will do.

12 THE COURT: All right. Okay. Mr. Kelvin,  
13 anything else you wish to add?

14 MR. KELVIN: No. Thank you for your time, Judge.

15 THE COURT: I appreciate your being here today.  
16 Mr. Bellicini, anything you wish to add?

17 MR. BELLICINI: No, Your Honor.

18 THE COURT: Okay. And thank you for being here.

19 MR. BELLICINI: Thank you.

20 THE COURT: Mr. Schwartz, we'll see you back here  
21 on October 10<sup>th</sup> at 1:00 o'clock.

22 MR. SCHWARTZ: I thought His Honor said October  
23 11<sup>th</sup>.

24 THE COURT: It's October 10<sup>th</sup> at 1:00 o'clock.

25 MR. SCHWARTZ: Okay. I thought the other matter

1 was in San Francisco, but I guess it's here.

2 MR. BELLICINI: No, it's in San Francisco.

3 THE COURT: Mr. Bellicini says it's on in the  
4 morning so this will be at 1:00 o'clock. Okay?

5 All right. Thank you very much.

6 ALL COUNSEL: Thank you, Your Honor.

7 (Whereupon, the proceedings are concluded at 2:38  
8 p.m.)

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I certify that the foregoing is a correct transcript from the digital sound recording of the proceedings in the above-entitled matter.

By: /s/ Jo McCall